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9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
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12  
13 SOBHY ISKANDER,

14                   Petitioner,

15                   v.

16 DEAN BORDERS, Warden,

17                   Respondent.  
18

Case No. ED CV 18-2288 SJO (MRW)

**ORDER DISMISSING SUCCESSIVE  
HABEAS ACTION**

19           The Court summarily dismisses this action pursuant to the successive  
20 habeas petition rule under 28 U.S.C. §§ 2243 and 2244.

21                                   \* \* \*

22           1.     Petitioner is a state prisoner. He wants to challenge his 2010  
23 convictions and sentence for child sexual abuse.

24           2.     Petitioner previously sought habeas relief in this Court regarding  
25 that criminal case. In 2016, this Court denied Petitioner's habeas corpus  
26 petition alleging that his sentence violated the federal constitution. Iskander v.  
27 Borders, ED CV 16-554 (SJO) (MRW). The Ninth Circuit Court of Appeals  
28 denied a certificate of appealability. (Docket # 26.)

1           3.     The current petition appears to allege another challenge to  
2     Petitioner's original state criminal case. The petition is not accompanied by a  
3     certificate from the Ninth Circuit authorizing a second or successive petition  
4     under 28 U.S.C. § 2244.

5           4.     Petitioner is well aware of his obligation to obtain such  
6     authorization from the federal appellate court. In September 2018, the Ninth  
7     Circuit denied a request for permission to file a new habeas action. (C.A. No.  
8     18-70321 at Docket # 10.) Additionally, Petitioner filed another successive  
9     petition application with the Ninth Circuit in October 2018. That request  
10    remains pending. (C.A. No. 18-72902 at Docket # 2.)

11          5.     Magistrate Judge Wilner issued an order informing Petitioner of  
12    the requirements of the successive petition rule under AEDPA. (Docket # 3.)  
13    Judge Wilner's order noted Petitioner's unsuccessful efforts to obtain  
14    permission from the Ninth Circuit to file a new action in the district court. The  
15    order offered Petitioner an opportunity to explain why the case should not be  
16    dismissed as successive.

17          6.     Petitioner submitted a brief response. (Docket # 5.) Petitioner  
18    failed to address the successive petition issue. Instead, he presented arguments  
19    involving the substance of his new habeas action and his original conviction.

20                   \* \* \*

21          7.     If it "appears from the application that the applicant or person  
22    detained is not entitled" to habeas relief, a court may dismiss a habeas action  
23    without ordering service on the responding party. 28 U.S.C. § 2243; see  
24    also Rule 4 of Rules Governing Section 2254 Cases in United States District  
25    Courts (petition may be summarily dismissed if petitioner plainly not entitled to  
26    relief); Local Civil Rule 72-3.2 (magistrate judge may submit proposed order  
27  
28

1 for summary dismissal to district judge “if it plainly appears from the face of  
2 the petition [ ] that the petitioner is not entitled to relief”).

3 8. Under federal law, a state prisoner is generally required to present  
4 all constitutional challenges to a state conviction in a single federal action.  
5 “Before a second or successive [habeas petition] is filed in the district court, the  
6 applicant shall move in the appropriate court of appeals for an order authorizing  
7 the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A).

8 9. A prisoner must obtain authorization from the Court of Appeals to  
9 pursue such a successive habeas petition before the new petition may be filed in  
10 district court. Id.; Burton v. Stewart, 549 U.S. 147, 156 (2007) (district court  
11 without jurisdiction to consider successive habeas action when prisoner “neither  
12 sought nor received authorization from the Court of Appeals before filing”).

13 10. “If the petition is second or successive, then the district court lacks  
14 jurisdiction and must dismiss the petition unless and until the court of appeals  
15 grants an application to file it.” Brown v. Muniz, 889 F.3d 661, 667, 676 (9th  
16 Cir. 2018) (“petitioner’s burden is higher” under statute to bring successive  
17 habeas action); Prince v. Lizzaraga, 733 F. App’x 382, 384 (9th Cir. 2018)  
18 (prisoner “must first apply to this [appellate] court for permission to have his  
19 petition heard in the district court”).

20 \* \* \*

21 11. Petitioner’s current habeas action is subject to summary dismissal.  
22 The petition challenges the same sexual abuse conviction that was the subject of  
23 his earlier habeas action. The Ninth Circuit expressly denied Petitioner  
24 permission to bring a new habeas action in this Court. (C.A. No. 18-70321 at  
25 Docket # 10.)

26 12. As a result, Petitioner does not have the ability under Section  
27 2244(b)(3)(A) to bring this habeas case. The current petition must be dismissed  
28

1 without further proceedings. 28 U.S.C. § 2244(b); Burton, 549 U.S. at 156;  
2 Brown, 889 F.3d at 667; Prince, 733 F. App'x at 384.

3 \* \* \*

4 Because the Court does not have jurisdiction to consider Petitioner's  
5 claim, the action is DISMISSED without prejudice as successive.

6 IT IS SO ORDERED.

7  
8 11/27/18

*S. James Otero*

9 Dated: \_\_\_\_\_

10 HON. S. JAMES OTERO  
11 UNITED STATES DISTRICT JUDGE

12 Presented by:

13 *[Signature]*  
14  
15

16 HON. MICHAEL R. WILNER  
17 UNITED STATES MAGISTRATE JUDGE